

ESTTA Tracking number: **ESTTA88001**

Filing date: **06/30/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	New Kingdom, Inc. d/b/a Sue Devitt Studio
Granted to Date of previous extension	07/01/2006
Address	152 Madison Avenue Suite 1600 New York, NY 10016 UNITED STATES

Attorney information	Hae Park-Suk Barnes & Thornburg, LLP 750 17th Street, NW Suite 900 Washington, DC 20006 UNITED STATES hparksuk@btlaw.com Phone:202-289-1313
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Applicant Information

Application No	78467055	Publication date	05/02/2006
Opposition Filing Date	06/30/2006	Opposition Period Ends	07/01/2006
Applicant	Kiss My Face Corporation 144 Main Street Gardiner, NY 12525 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Body wash and bar soap containing vitamin C
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Attachments	cweed.pdf (5 pages)(173836 bytes)
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Signature	/hparksuk/
Name	Hae Park-Suk
Date	06/30/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

New Kingdom, Inc.)	
d/b/a Sue Devitt Studio)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Kiss My Face Corporation)	
)	
Applicant.)	Serial No. 78/467,055

NOTICE OF OPPOSITION

New Kingdom, Inc. d/b/a Sue Devitt Studio, a Delaware corporation, believes that it will be damaged by Applicant’s registration of the trademark C-WEED for body wash and bar soap containing vitamin C, as shown in Application Serial No. 78/467,055 filed on August 13, 2004 and published for opposition on May 2, 2006 (the “Opposed Mark”), and hereby opposes said application.

As grounds for this opposition, Opposer alleges:

1. Opposer, New Kingdom, Inc. d/b/a Sue Devitt Studio, is a Delaware corporation, with a place of business located at 152 Madison Avenue, Suite 1600, New York, New York 10016.
2. Opposer is engaged in the business of manufacturing skin care and cosmetic products, and providing professional makeup and beauty consultation services.
3. Opposer has used TRIPLE C-WEED as a trademark for various cosmetics and skin care preparations such as foundation, whipped foundation, loose powder and pressed powder since at least as early as October 2001.

4. Opposer has invested a great deal of time and money in promoting these goods under the TRIPLE C-WEED trademark, and continues to use and promote these goods under the TRIPLE C-WEED trademark.

5. By virtue of Opposer's continuous, exclusive and widespread use of the TRIPLE C-WEED mark, Opposer's Mark has acquired significant consumer recognition and distinctiveness, and it is entitled to a broad scope of protection for the mark.

6. Upon information and belief, Applicant, Kiss My Face Corporation, is a New York corporation with an address at 144 Main Street Gardiner, New York 12525.

7. On August 13, 2004, Applicant filed its intent-to-use Application Serial No. 78/467,055 (the Opposed Application) to register the mark C-WEED for use in connection with body wash and bar soap containing vitamin C, in International Class 3.

8. On October 6, 2002, Applicant filed its intent-to-use Application Serial No. 78/171,450 (the '450 Application) to register the mark C-WEED for use in connection with after shave lotions, bath oils and salts, body and facial lotions, bar soaps, body moisturizers, body scrubs, deodorants for personal use, facial cleansers, facial astringents and toners, facial scrubs and masks, facial creams, hair shampoos and conditioners, hair styling gel, hand cream, liquid soap for hand, face and body, shower gels and foaming baths, and shave creams, in International Class 3.

9. On July 2, 2005, Applicant filed an Amendment to Use in the '450 Application, claiming January 31, 2003 as the date of first use anywhere and January 31, 2003 as the date of first use in commerce.

10. On May 16, 2006, the '450 Application was declared abandoned for failure to respond to an office action.

11. The dominant portion of Opposer's Mark is identical to Applicant's Mark, C-WEED.

12. Opposer is the owner of an intent-to-use Application Serial No. 76/626,340, filed December 30, 2004, for the mark TRIPLE C-WEED, for a full line of cosmetics and non-medicated skin preparations, in International Class 3.

13. On August 4, 2005, the Examining Attorney cited both the Opposed Application and the '450 Application as possible bars under Section 2(d) of the Trademark Act to Opposer's Application No. 76/626,340. On April 13, 2006, Opposer's Application was suspended pending disposition of both cited applications.

14. Applicant's mark, when used for the goods recited in the opposed application, is likely to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. Sec. 1052(d).

15. As evidenced by the suspension of Opposer's Application, the Examining Attorney in Opposer's Application likewise found Applicant's Mark to be confusingly similar to Opposer's Mark.

16. Use or application for registration by Applicant of the C-WEED mark is without Opposer's consent.

17. Upon information and belief, neither Applicant, nor any predecessor in interest, used the Opposed Mark prior to October 2001.

18. Upon information and belief, neither Applicant, nor any predecessor in interest, used the Opposed Mark in commerce prior to October 2001.

19. Upon information and belief, Opposer has priority over Applicant with respect to the trademark C-WEED and TRIPLE C-WEED.

20. In the '450 Application, the Examining Attorney requested a disclaimer of "seaweed," on the grounds that C-WEED is a misspelling of "seaweed," and Applicant agreed to this disclaimer. The Examining Attorney assigned to the Opposed Application likewise noted in an Office Action dated August 16, 2005 that "c-weed [is] a misspelling of "seaweed. . ."

21. C-WEED is a misspelling of seaweed.

22. Because the mark C-WEED is comprised of nothing more than a misspelling of "seaweed," prospective purchasers and those knowledgeable in the relevant trade are likely to believe that Applicant's product contains seaweed.

23. Prospective purchasers and those knowledgeable in the trade understand that seaweed has highly beneficial properties for the skin and overall health, and scientific studies have shown that seaweed is a highly beneficial skin care ingredient.

24. The product which Applicant sells under the C-WEED mark does not contain seaweed.

25. C-WEED, as a misspelling of "seaweed," is misdescriptive of the quality and composition of a skin care product that does not contain seaweed.

26. Prospective purchasers and those knowledgeable in the relevant trade are likely to believe that "seaweed" actually does describe the composition, or an ingredient, of a product labeled C-WEED.

27. Prospective purchasers and those knowledgeable in the relevant trade are more likely to purchase a skin care product that contains seaweed than one that does not contain seaweed.

28. Applicant's mark is deceptive under Trademark Act Section 2(a).

29. Opposer's customers expect Opposer's goods to contain seaweed.

30. When Opposer's customers encounter Applicant's products devoid of seaweed, they will mistakenly attribute this deception and inferior quality to Opposer. Opposer's good will and reputation thereby will be further tarnished by the Applicant's use of the deceptive mark C-WEED.

WHEREFORE, Opposer believes that it will be damaged by the registration of C-WEED by Applicant, and prays that said registration be denied.

Respectfully submitted,

New Kingdom, Inc. d/b/a Sue Devitt Studio

Date: June 29, 2006

By:



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Attorneys for Opposer
File Docket No. 38240-44277

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served on Michael A. Cornman, Esq. at his last-known place of business at Schweitzer Cornman Gross & Bondell, LLP, 292 Madison Ave, 19th Floor, New York, New York 10017, on the 30th day of June 2006, by first class mail, postage prepaid.


Hae Park-Suk, Esq.